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**ATTORNEYS FOR PLAINTIFFS**  
**(pro hac vice application pending)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

PAMELA RUTLEDGE-MUHS and JAY  
WOOLWINE, on behalf of themselves and all others  
similarly situated,  
Plaintiffs,

v.

DREYER'S GRAND ICE CREAM, INC.,  
Defendants.

**11** Cause No. **3164**

Judge: \_\_\_\_\_

**ORIGINAL CLASS ACTION  
COMPLAINT FOR  
DAMAGES, EQUITABLE,  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiffs, by their attorneys, brings this class action against Defendant Dreyer's Grand Ice Cream, Inc. ("Dreyer's") or ("Defendant"), on their behalf and on behalf of all others similarly situated. Plaintiffs allege the following upon personal knowledge as to themselves and their own acts, and as to all other matters, upon information and belief, based upon the investigation made by and through their attorneys:

1 **I. NATURE OF ACTION**

2 1. This is a class action on behalf of a nationwide class of consumers who purchased  
3 Dreyer's Grand Ice Cream, Inc.'s purported "All Natural" Ice Cream Products<sup>1</sup> containing alkalized  
4 cocoa processed with potassium carbonate beginning June 25, 2007 through the present ("Class  
5 Period"). Since at least 2007, Dreyer's has packaged, marketed and sold its ice cream products as  
6 being "All Natural" despite the fact that the products contain alkalized cocoa processed with a non-  
7 natural, man-made, synthetic ingredient—potassium carbonate.  
8

9 2. Throughout the Class Period, Dreyer's made and continues to make the claim "All  
10 Natural" on the labels of its Ice Cream Products, in an effort to promote the sale of its Ice Cream  
11 Products, even though its Ice Cream Products are actually not "All Natural." While the "All  
12 Natural" Ice Cream Products' labels did disclose they contained alkalized cocoa, the labels did not  
13 disclose to consumers that the alkalized cocoa was processed with potassium carbonate. This is a  
14 significant omission because alkalized cocoa can also be processed with a natural ingredient, such as  
15 sodium carbonate.  
16

17 3. In light of the "All Natural" misrepresentation on the products' labels, and the  
18 availability of natural processing ingredients for alkalized cocoa, a reasonably prudent consumer  
19 would certainly not normally expect the alkalized cocoa in Dreyer's Ice Cream Products to be  
20 processed with a man-made, synthetic ingredient, like potassium carbonate. As a result of this false  
21 and misleading labeling and marketing, Dreyer's was able to sell these purportedly "All Natural"  
22 Ice Cream Products to thousands of unsuspecting consumers in California and throughout the  
23 United States and profited from these transactions. Plaintiffs allege Dreyer's conduct gives rise to  
24  
25

26  
27 <sup>1</sup> The term "Ice Cream Products" shall mean and include Dreyer's "All Natural" premium ice  
28 creams, yogurts, and sorbets.

1 common law fraud, violates the unlawful, unfair, and fraudulent prongs of California's Unfair  
2 Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), violates the California Business &  
3 Professions Code § 17500, *et seq.*, and violates the Consumers Legal Remedies Act (California  
4 Civil Code § 1750, *et seq.*). Plaintiffs also allege that Dreyer's conduct is grounds for restitution on  
5 the basis of quasi-contract / unjust enrichment.  
6

7 4. Dreyer's has its principal place of business in Oakland, California and, upon  
8 information and belief, operates, manages, and directs its nationwide sales business operations from  
9 its offices in California. Therefore, upon information and belief, the misleading labeling and related  
10 marketing misconduct and representations at issue in this Original Complaint occurred, were  
11 conducted, and/or were directed substantially from Defendant's headquarters in California.  
12

13 5. Plaintiffs also seek injunctive and declaratory relief based upon Dreyer's conduct  
14 asserted in this Original Complaint. As of the date of this Original Complaint, retail stores in the  
15 United States and California are selling Dreyer's Ice Cream Products labeled as "All Natural," even  
16 though they contain alkalized cocoa processed with potassium carbonate, a man-made, synthetic  
17 ingredient. Accordingly, Plaintiffs seek declaratory and injunctive relief to ensure Dreyer's removes  
18 any and all of the "All Natural" representations from the labels and packaging of its Ice Cream  
19 Products available for purchase, and to prevent Dreyer's from making the "All Natural"  
20 representation on its Ice Cream Products' labels in the future, as long as the Ice Cream Products  
21 continue to use alkalized cocoa processed with a synthetic, unnatural substance.  
22

23 **A. PARTIES**

24 6. Plaintiff Pamela Rutledge-Muhs is an individual residing in San Bernardino County,  
25 California.  
26

27 7. Plaintiff Jay Woolwine is an individual residing in San Bernardino County,  
28

1 California.

2 8. Defendant Dreyer's Grand Ice Cream, Inc., is incorporated in Delaware and has its  
3 principle place of business and headquarters at 5929 College Avenue, Oakland, California 94618.  
4 Upon information and belief, Defendant made its marketing decisions, including the decisions  
5 regarding marketing its Ice Cream Products, from its corporate headquarters in Oakland, California.  
6 Dreyer's claims to produce a variety of premium ice cream products made with all natural ingredients  
7 and all natural flavors. Dreyer's currently manufactures and distributes premium products under the  
8 Dreyer's brand name in the Western United States and Texas and under the EDY'S<sup>®</sup> brand name east  
9 of the Rocky Mountains. Dreyer's also produces and distributes the super-premium line of Haagen-  
10 Daz products in the United States. Dreyer's products are sold and distributed nationwide in grocery  
11 stores, convenience stores, restaurants, hotels and other retail locations.  
12

13  
14 **JURISDICTION AND VENUE**

15 9. This Court has subject matter jurisdiction over this action pursuant to 28  
16 U.S.C. § 1332(d). One or more members of the putative class of plaintiffs are citizens of States  
17 different from Defendant. Upon information and belief, the total number of members of the  
18 proposed Class is greater than 100 and the matter in controversy exceeds the aggregate sum of  
19 \$5,000,000, exclusive of interest and costs. Accordingly, diversity of citizenship exists under the  
20 Class Action Fairness Act, as required by 28 U.S.C. § 1332(d)(2)(A).  
21

22 10. Upon information and belief, based upon Defendant's sales of its products through  
23 thousands of retail stores nationwide, more than two thirds of all Class members of the proposed  
24 Class are citizens of a State other than California.

25 11. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391. Defendant  
26 resides in this judicial district. Upon information and belief, a substantial part of the events or  
27  
28



1 omissions giving rise to the claims alleged herein occurred in this judicial district. Defendant is  
2 subject to personal jurisdiction and/or may be found in this judicial district.

3 12. The Declaration of Daniel R. Tamez, made pursuant to California Civil Code §  
4 1780(d) regarding venue under the California Consumers Legal Remedies Act (Civil Code §§ 1750,  
5 *et seq.*), is attached hereto.  
6

7 **B. FACTUAL ALLEGATIONS**

8 13. The cocoa bean is a seed that grows on trees native to South America. The fermented  
9 and dried cocoa seed is the basic ingredient in chocolate. Chocolate is a name given to products that  
10 are derived from cocoa which are then mixed with some sort of fat and finely powdered sugar to  
11 produce a solid edible product.  
12

13 14. To make chocolate, cocoa beans are processed, roasted, cracked and shelled. The  
14 resulting pieces are further processed into a chocolate liquor, butter or powder. The cocoa powder is  
15 typically used in the flavoring of ice creams.

16 15. Unsweetened baking cocoa powder is typically rendered in one of two forms: an un-  
17 alkalized cocoa or a version known as Dutch-process/alkalized cocoa. Both are made by pulverizing  
18 partially defatted chocolate liquor and removing nearly all the cocoa butter. Un-alkalized cocoa is  
19 light in color and somewhat acidic with a strong chocolate flavor. Dutch-process cocoa is processed  
20 with alkali to neutralize its acidity. Dutch cocoa is slightly milder in taste, with a deeper and warmer  
21 color than un-alkalized cocoa. Dutch-process cocoa is frequently used when the product calls for the  
22 blending of cacao with liquids. Dutch processing destroys most of the flavonols present in un-  
23 alkalized cocoa—the water-soluble plant pigments that are believed to give dark chocolate health  
24 benefits in the form of antioxidant, anti-inflammatory and antiviral properties.  
25

26 16. Cocoa is typically either un-alkalized, or alkalized. In order for cocoa to be used in  
27  
28

1 its alkalized form, a Dutching or alkalization takes place during the processing of the cocoa beans.  
2 During this process an alkali—usually either potassium carbonate or sodium carbonate<sup>2</sup>—is  
3 suspended in water to neutralize acids and alter the pH level of the beans. The alkalizing agent  
4 darkens the cocoa, makes it milder in flavor, and increases its dispersability.  
5

6 17. Dreyer's Ice Cream Products containing alkalized cocoa are processed with  
7 potassium carbonate. Potassium carbonate is a recognized synthetic substance. Significantly, the  
8 other commonly used alkali in making alkalized cocoa—sodium carbonate—is a recognized non-  
9 synthetic, natural substance. However, Dreyer's Ice Cream Products did not disclose that the  
10 alkalized cocoa it used was processed with potassium carbonate, the synthetic substance, despite the  
11 "All Natural" representation on its Ice Cream Products' labels.  
12

13 18. Product package labels convey nutrition information to consumers that consumers can  
14 and do use to make purchasing decisions.

15 19. The alkalized cocoa in Dreyer's Ice Cream Products was processed with potassium  
16 carbonate—a synthetic substance. While Dreyer's "All Natural" Ice Cream Products' labels did  
17 disclose that they contain alkalized cocoa, those labels did not disclose that the alkalized cocoa was  
18 processed with potassium carbonate. This omission is significant and material given the "All  
19 Natural" representation on the Ice Cream Products' labels. Indeed, based on the "All Natural"  
20 representation, one would normally expect the alkalized cocoa contained in the Ice Cream Products  
21  
22

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23 <sup>2</sup> Besides the commonly used potassium carbonate and sodium carbonate, there are other less  
24 commonly used alkali substances that are used in processing cocoa not listed herein. Significantly,  
25 sodium carbonate and sodium bicarbonate appear to be the only safe and suitable non-synthetic  
26 alkali substances. To the extent Dreyer's may claim some of its Ice Cream Products may have to  
27 some degree used alkalized cocoa processed with one or more of these less commonly used alkali  
28 substances, it is believed and therefore averred by Plaintiffs that the Dreyer's Ice Cream Products did  
not contain alkalized cocoa processed with one of the non-synthetic alkali substances, and instead  
contained alkalized cocoa processed with one of the synthetic alkali substances.

1 to be processed with the commonly used non-synthetic, natural alternative, like sodium carbonate.

2 20. According to Dreyer's Ice Cream Products' labels, cocoa processed with alkali is  
3 used as an ingredient in over 80 of Dreyer's Ice Cream Products which otherwise claim to be "All  
4 Natural" or to contain all natural flavors. These products include:

5 **a. Haagen-Daz "All-Natural" Flavors—Ice Cream**

6  
7 Banana Split  
8 Caramel Cone Chocolate  
9 Chocolate "Five"  
10 Chocolate Chip Cookie Dough  
11 Chocolate Chocolate Chip  
12 Chocolate Peanut Butter Cookies & Cream  
13 Dark Chocolate  
14 Java Chip Mint Chip  
15 Rocky Road  
16 White Chocolate Raspberry Truffle

17 **b. Haagen-Daz "All Natural" Frozen Yogurts**

18 Chocolate Almond

19 **c. Haagen-Daz "All Natural" Lowfat Sorbet**

20 Chocolate

21 **d. Haagen-Daz "All Natural" Ice Cream Bars**

22 Chocolate & Dark Chocolate

23 **e. Dreyer's and Edy's "All Natural" Slow Churned<sup>®</sup> Light Ice Cream**

24 Chocolate Chocolate Chip Cookie Dough  
25 Cookies 'n Cream Double Fudge Brownie French Silk  
26 Fudge Tracks  
27 Mint Chocolate Chip Mint Cookie Crunch  
28 Mocha Almond Fudge  
Mud Pie  
Neapolitan  
Nestle Drumstick Sundae Cone  
Peanut Butter Cup  
Rocky Road Triple Chocolate Peanut Butter Sundae  
Triple Cookie Fudge Sundae

**f. Dreyer's and Edy's "All Natural" Slow Churmed<sup>®</sup> No Sugar Ice Cream**

Fudge Tracks  
Mint Chocolate Chip  
Neapolitan  
Triple Chocolate

**g. Dreyer's and Edy's "All Natural" Slow Churned<sup>®</sup> Yogurt Blends**

Cappuccino Chip  
Chocolate Fudge Brownie  
Chocolate Vanilla Swirl  
Cookies 'n Cream

**h. Dreyer's and Edy's "All Natural" Grand Ice Cream**

Chocolate  
Chocolate Chip  
Mint Chocolate Chip  
Neapolitan  
Rocky Road  
Vanilla Chocolate

**i. Dreyer's and Edy's "All Natural" Fun Flavors Ice Cream**

Mocha Almond Fudge Nestle Drumstick  
Peanut Butter Cup  
Chocolate Peanut Butter Cup

21. Plaintiffs reserve the right to edit this list as discovery progresses.

22. The labeling of products as "All Natural" carries implicit health benefits important to consumers—benefits that consumers are often willing to pay a premium over comparable products that are not "All Natural."

23. Dreyer's has used the "All Natural" label to shape its brand and sell its products. Yet, the existence of alkalized cocoa processed with potassium carbonate in its Ice Cream Products renders the use of the label "All Natural" false and misleading. In manufacturing its Ice Cream Products, Dreyer's had a choice between using natural or unnatural alkali processed cocoa. It chose the latter, but nonetheless labeled its Ice Cream Products as "All Natural."



1 **PLAINTIFFS' PURCHASES**

2 24. Plaintiffs are willing to and have paid a premium for foods that are all natural.

3 25. For approximately the past five years, Plaintiff Rutledge-Murs purchased, on average,  
4 one pint-sized container of Dreyer's Mint Chocolate Chip flavored ice cream about every other  
5 month at the Stater Bros. Markets store located in San Bernardino, California.  
6

7 26. For approximately the past two years, Plaintiff Woolwinc purchased, on average, two  
8 pint-sized containers of Dreyer's Chocolate Peanut Butter Cup flavored ice cream about every  
9 month at Vons and Stater Bros. Markets stores located in Big Bear City and Big Bear Lake.  
10 California.

11 27. Based on the "All Natural" representation on the Dreyer's Ice Cream Products'  
12 labels, Plaintiffs believed the Dreyer's Ice Cream Products they purchased were all natural and  
13 relied on this representation in making their purchases.  
14

15 28. Instead, upon information and belief, the Dreyer's Ice Cream Products that Plaintiffs  
16 purchased contained alkalized cocoa processed with potassium carbonate—a synthetic ingredient.  
17 While touting the product as "All Natural," the Ice Cream Products' labels Plaintiffs relied on,  
18 neither disclosed that the alkalized cocoa used in the Ice Cream Products was processed with  
19 potassium carbonate, a synthetic ingredient, nor otherwise disclosed that a synthetic ingredient was  
20 used in the Dreyer's Ice Cream Products.  
21

22 29. Plaintiffs not only purchased the Dreyer's Ice Cream Products because the labels said  
23 they were "All Natural," but also, Plaintiffs paid more money for the products than they would have  
24 paid for other similar ice cream or frozen yogurt products that were not all natural. Had Plaintiffs  
25 known the truth that the Dreyer's Ice Cream Products were not all natural (as represented by  
26 Defendant), they would not have purchased the Dreyer's Ice Cream Products, but would have  
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28

1 purchased another brand of ice cream or frozen yogurt that was truly all natural or, if one was not  
2 available, would have purchased another non-natural ice cream or frozen yogurt product that was  
3 less expensive than Dreyer's Ice Cream Products.

4 30. Plaintiffs did not receive the "All Natural" Ice Cream Products they bargained for  
5 when they purchased the Dreyer's "All Natural" Ice Cream Products, and have lost money as a  
6 result in the form of paying a premium price for Dreyer's Ice Cream Products because they were  
7 purportedly all natural, rather than paying a lesser amount for non-natural alternative ice cream  
8 products.  
9

#### 10 CLASS ACTION ALLEGATIONS

11 31. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil  
12 Procedure 23(a), and 23(b)(1), 23(b)(2) and 23(b)(3), on behalf of themselves and all other  
13 members of the Class ("Class"), defined as:  
14

15 All persons in the United States who purchased Dreyer's Ice Cream Products that  
16 were labeled "All Natural" but also contained alkalized cocoa processed with a  
synthetic ingredient during the Class Period.

17 32. Excluded from the Class are: (i) all persons who purchased Dreyer's Ice Cream  
18 Products for resale; (ii) Defendant, its parent companies, principals, legal representatives,  
19 subsidiaries and affiliates, and any co-conspirators, (iii) all governmental entities, (iv) and any  
20 judges or justices assigned to hear any aspect of this action.  
21

22 33. Plaintiffs reserve the right to amend the class definition prior to class certification.

23 34. Upon information and belief, there are tens of thousands of Class members who are  
24 geographically dispersed throughout the United States. Therefore, individual joinder of all  
25 members of the Class would be impracticable.

26 35. Common questions of law or fact exist as to all members of the Class. These  
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28

1 questions predominate over the questions affecting only individual class members. These common  
2 legal or factual questions include, but are not limited to:

- 3 a. whether Dreyer's labels its Ice Cream products as "All Natural;"
- 4 b. whether the alkalized cocoa used in Dreyer's Ice Cream Products is processed  
5 with a synthetic ingredient;
- 6 c. whether Dreyer's "All Natural" labeling of its Ice Cream Products is false and  
7 misleading and likely to deceive class members and/or the general public;
- 8 d. whether Dreyer's conduct is unlawful;
- 9 e. whether Dreyer's conduct is fraudulent;
- 10 f. whether Dreyer's conduct violates the California Consumers Legal Remedies  
11 Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 12 g. whether Dreyer's conduct violates California's Unfair Competition Law (Cal.  
13 Bus. & Prof. Code §§ 17200, *et seq.*);
- 14 h. whether Dreyer's conduct violates the California Business & Professions  
15 Code § 17500, *et seq.*; and
- 16 i. the appropriate measure of damages, restitutionary disgorgement and/or  
17 restitution.

18 36. Plaintiffs' claims are typical of the claims of the Class, in that Plaintiffs were  
19 consumers who purchased Dreyer's "All Natural" Ice Cream Products in the United States that  
20 contained alkalized cocoa processed with a synthetic ingredient during the Class Period. Plaintiffs,  
21 therefore, are no different in any relevant respect from any other Class member, and the relief  
22 sought is common to the Class.

23 37. Plaintiffs are adequate representatives of the Class because their interests do not  
24 conflict with the interests of the Class they seek to represent, and they have retained counsel  
25 competent and experienced in conducting complex class action litigation. Plaintiffs and their  
26 counsel will adequately protect the interests of the Class.  
27  
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1        38. A class action is superior to other available means for the fair and efficient  
2 adjudication of this dispute. The damages suffered by each individual class member likely will be  
3 relatively small, especially given the relatively small cost of the Ice Cream Products at issue and the  
4 burden and expense of individual prosecution of these claims. Thus, it would be virtually  
5 impossible for the Class members, individually, to effectively redress the wrongs done to them.  
6 Moreover, even if the Class members could afford individual actions, it would still not be  
7 preferable to class-wide litigation. Individualized actions present the potential for inconsistent or  
8 contradictory judgments. By contrast, a class action presents far fewer management difficulties and  
9 provides the benefits of single adjudication, economies of scale, and comprehensive supervision by  
10 a single court.  
11

12  
13        39. In the alternative, the Class may be certified because Dreyer's has acted or refused to  
14 act on grounds generally applicable to the Class, thereby making preliminary and final equitable  
15 relief with respect to the Class appropriate.

16                                    **FIRST CAUSE OF ACTION**  
17                                    **(Common Law Fraud)**

18        40. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate  
19 them as if fully set forth herein verbatim.

20        41. During the Class Period, Dreyer's product labels for its Ice Cream Products uniformly  
21 misrepresented that its Ice Cream Products were "All Natural," when in fact they contain alkalized  
22 cocoa powder processed with potassium carbonate, a synthetic ingredient. While Dreyer's labels  
23 did disclose during the Class Period that its "All Natural" Ice Cream Products contained alkalized  
24 cocoa powder, it uniformly *did not* disclose during the Class Period that the alkalized cocoa powder  
25 used contained the synthetic, potassium carbonate. Thus, the disclosure on its labels that the Ice  
26 Cream Products contained alkalized cocoa powder constitutes an affirmative act of concealment  
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28



1 and non-disclosure since cocoa powder may be alkalized with natural ingredients such as sodium  
2 carbonate, and the information about whether Defendant's cocoa powder was alkalized with the  
3 synthetic potassium carbonate was known only by Defendant. Defendant had a duty to disclose this  
4 material information in light of its representation on its labels that its Ice Cream Products were "All  
5 Natural."

6  
7 42. Defendant's "All Natural" statements and representations and its affirmative  
8 concealments and omissions described herein were material in that there was a substantial  
9 likelihood that a reasonable prospective purchaser of its Ice Cream Products would have considered  
10 this information important when deciding whether or not to purchase the Ice Cream Products.

11 43. Defendant knew or recklessly disregarded that its Ice Cream Products were not "All  
12 Natural," and uniformly misrepresented its Ice Cream Products as "All Natural" and affirmatively  
13 concealed and omitted the truth with the intent and purpose of inducing consumers (*i.e.*, Plaintiffs  
14 and the Class) to purchase its Ice Cream Products.

15  
16 44. Defendant failed to disclose, misrepresented and/or concealed the foregoing material  
17 facts from Plaintiffs and the Class knowing that these facts may have justifiably induced them to  
18 refrain from purchasing Defendant's Ice Cream Products and instead purchase another  
19 manufacturer's ice cream, frozen yogurt or sorbet that was actually all natural, or to purchase a less  
20 expensive non-natural substitute ice cream, frozen yogurt or sorbet product.

21  
22 45. As set forth in paragraphs 24-30 (and others) of this Complaint, Plaintiffs relied on  
23 Defendant's "All Natural" representations on its Ice Cream Products' labels as a material basis for  
24 their decisions to purchase Defendant's Ice Cream Products. Moreover, based on the very  
25 materiality of Defendant's misrepresentations, concealments and omissions uniformly made on (or  
26 omitted from) its Ice Cream Products' labels, Class members' reliance on those misrepresentations,  
27  
28

1 concealments and omissions as a material basis for their decision to purchase Defendant's Ice  
2 Cream Products may be presumed or inferred for all Class members.

3 46. Defendant carried out the scheme set forth in this Complaint willfully, wantonly and  
4 with reckless disregard for the interests of Plaintiffs and the Class.

5  
6 47. By reason of the foregoing, Plaintiffs and members of the Class have been injured by  
7 purchasing Dreyer's Ice Cream Products represented to be "All Natural," which they were not,  
8 and/or by paying a premium for purportedly "All Natural" Ice Cream Products over less expensive  
9 non-natural alternatives. Plaintiffs and the members of the Class are therefore entitled to recover  
10 damages, punitive damages, equitable relief, such as restitution and disgorgement of profits, and  
11 declaratory and injunctive relief.

12 **SECOND CAUSE OF ACTION**  
13 **False Advertising in Violation of**  
**Cal. Bus. & Prof. Code §§17500, *et seq.***

14 48. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate  
15 them as if fully set forth herein verbatim.

16 49. This cause of action is brought by Plaintiffs on behalf of themselves, the Class  
17 members, and the general public.

18  
19 50. Defendant has engaged in false advertising on its packaging to sell its Ice Cream  
20 Products, as set forth herein. Defendant is disseminating advertising concerning its goods which by  
21 its very nature is deceptive, untrue, or misleading within the meaning of California Business &  
22 Professions Code § 17500, *et seq.* because those advertising statements contained on its Ice Cream  
23 Products labels are misleading and likely to deceive, and continue to deceive, members of the  
24 putative Class and the general public.

25  
26 51. In making and disseminating the statements alleged herein, Defendant knew or should  
27 have known, by exercising reasonable care, that the statements were untrue and/or misleading.

1        52. The misrepresentations and non-disclosures by Defendant of the material facts  
2 detailed herein constitute false and misleading advertising and therefore constitute a violation of  
3 California Business & Professions Code § 17500, *et seq.*

4        53. As a direct and proximate result of Defendant's conduct, as set forth herein,  
5 Defendant has improperly and illegally obtained received ill-gotten gains and/or profits, including  
6 but not limited to, money. Therefore, Defendant has been unjustly enriched.

7        54. Pursuant to California Business & Professions Code § 17535, Plaintiffs request  
8 injunctive relief, restitution and restitutionary disgorgement of Defendant's ill-gotten gains and  
9 money and/or for all sums obtained in violation of California Business & Professions Code §  
10 17500, *et seq.* (by means of such false advertising), as well as interest and attorneys fees, to  
11 Plaintiffs and the members of the Class, so as to restore any and all monies which were acquired or  
12 obtained by means of such untrue and misleading advertising, misrepresentations, and/or omissions.

13        55. Such conduct is ongoing and continues to this date. Plaintiffs and the Class seek to  
14 enjoin Defendant from engaging in these wrongful practices, as alleged herein, in the future. There  
15 is no adequate remedy at law and if an injunction is not ordered, Plaintiffs and the Class will suffer  
16 irreparable harm and/or injury and continue to be harmed by Defendant's false and/or misleading  
17 advertising.

18        56. Pursuant to California Business & Professions Code § 17535, Plaintiffs seek an order  
19 of this Court ordering Defendant to fully disclose the true nature of its misrepresentations.

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23                    **THIRD CAUSE OF ACTION**

24                    **Violation of**

25                    **The Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200, *et seq.***

26        57. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate  
27 them as if fully set forth herein verbatim.

1        58. The Unfair Competition Law ("UCL"), California Business & Professions Code, §  
2 17200, defines unfair competition to include any "unlawful, unfair or fraudulent" business act or  
3 practice, as well as any "unfair, deceptive, untrue or misleading" advertising.

4        59. A business act or practice is "unlawful" if it violates any established state or federal  
5 law.

6        60. California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Article 6,  
7 §110660 provides that: "Any food is misbranded if its labeling is false or misleading in any  
8 particular."

9        61. Dreyer's has violated, and continues to violate the Sherman Law, Article 6, § 110660  
10 and hence has also violated and continues to violate the "unlawful" prong of the UCL through its  
11 use of the term "All Natural" on the labels of its Ice Cream Products that contained alkalized cocoa  
12 processed with an unnatural, synthetic ingredient. This conduct also serves as the sole factual basis  
13 of each cause of action brought by this Complaint, and Plaintiffs do not seek to enforce any of the  
14 state law claims raised herein to impose any standard of conduct that exceeds that which would  
15 violate federal policy concerning what is "natural."

16        62. Defendant is also engaging in unlawful conduct by, including but not limited to,  
17 failing to comply with the Consumers Legal Remedies Act.

18        63. By committing the acts and practices set forth above, Dreyer's has engaged, and  
19 continues to be engaged, in unlawful business practices within the meaning of California Business  
20 and Professions Code § 17200 *et seq.*

21        64. Furthermore, Defendant's conduct, as set forth herein, also constitutes "unfair"  
22 business practices within the meaning of the UCL insofar as Defendant's business practices alleged  
23 herein are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to  
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1 consumers.

2 65. A business act or practice is “unfair” if the reasons, justifications, and motives of the  
3 alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

4 66. Dreyer’s has, and continues to violate the “unfair” prong of the UCL through its  
5 misleading description of its products as “All Natural” when indeed a main ingredient is not natural  
6 and is being processed with a synthetic substance. The harm to Plaintiffs and members of the Class  
7 resulting from such unfair acts and/or practices outweighs any of Dreyer’s reasons, justifications  
8 and/or motives for engaging in such deceptive acts and/or practices.

9 67. By committing the acts and/or practices set forth herein, Dreyer’s has engaged, and  
10 continues to engage, in unfair business practices within the meaning of the California Business &  
11 Professions Code 17200, *et seq.*

12 68. Finally, Defendant’s conduct, as set forth herein, also constitutes “fraudulent”  
13 business practices within the meaning of the UCL insofar as Defendant’s business acts and/or  
14 practices of mislabeling their products as “All Natural” (despite the fact they contained alkalized  
15 cocoas processed with a non-natural, synthetic substance) actually deceives and/or is likely to  
16 deceive members of the public and has the effect of misleading consumers into believing the  
17 product is something that it is not.

18 69. A business act or practice is “fraudulent” under the UCL if it actually deceives or is  
19 likely to deceive members of the consuming public.

20 70. These above-described unlawful, unfair, and fraudulent practices and false and  
21 misleading advertising by Defendant presents an ongoing threat to Plaintiffs and the Class.

22 71. As a direct and proximate result of Defendant’s violations of the Unfair Competition  
23 Law, Plaintiffs and the Class members have suffered harm in that they reasonably relied on  
24

1 Defendant's misrepresentations and were induced to purchase certain of Defendant's Ice Cream  
2 Products.

3 72. As a direct and proximate result of Defendant's violations of California Business &  
4 Professions Code §17200, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiffs  
5 and the members of the Class by the profits it has obtained from Plaintiff and the other members of  
6 the Class from their purchases of Ice Cream Products. Defendant has unfairly and improperly  
7 obtained (and continues to obtain) money from Plaintiffs and members of the Class. As such,  
8 Defendant should be required to make restitution to Plaintiffs and the members of the Class or make  
9 restitutionary disgorgement of its ill-gotten profits, pursuant to California Business & Professions  
10 Code § 17203.  
11

12 73. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment  
13 against Defendant for injunctive relief and/or restitutionary disgorgement, and an award of  
14 attorneys' fees.  
15

16 74. Plaintiffs and the members of the Class seek to enjoin Defendant from currently  
17 engaging in these wrongful practices, as set forth herein, and to enjoin Defendant from engaging in  
18 these wrongful practices in the future. There is no other adequate remedy at law and if an  
19 injunction is not ordered, Plaintiffs and the members of the Class will suffer irreparable harm and/or  
20 injury.  
21

22 **FOURTH CAUSE OF ACTION**  
23 **Violation of the Consumers Legal Remedies Act,**  
24 **California Civil Code § 1750, *et seq.***

25 75. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate  
26 them as if fully set forth herein verbatim.

27 76. This cause of action is brought pursuant to the Consumers Legal Remedies Act,  
28

1 California Civil Code § 1750. *et seq.* (the "CLRA").

2 77. Plaintiffs and each member of the proposed Class are "consumers" within the  
3 meaning of California Civil Code § 1761(d).

4 78. The purchases of Dreyer's products by consumers constitute "transactions" within the  
5 meaning of California Civil Code § 1761(e) and the Ice Cream Products offered by Dreyer's  
6 constitute "goods" within the meaning of California Civil Code § 1761(a).

7 79. Dreyer's has engaged and continues to engage in practices in violation of the CLRA  
8 by making false representations, in at least the following respects:

- 9
- 10 a. Dreyer's represents that the goods had characteristics which it did not have, in  
11 violation of California Civil Code § 1770(a)(5);
  - 12 b. Dreyer's represents that its goods were of a particular standard, quality or  
13 grade, which they were not, in violation of California Civil Code § 1770(a)(7);  
14 and
  - 15 c. Dreyer's advertised its goods with the intent not to provide what it advertised,  
16 in violation of California Civil Code § 1770(a)(9).

17 80. Defendant has engaged in deceptive acts and/or practices intended to result in  
18 purchases of certain of its Ice Cream Products in violation of the CLRA. Defendant knew and/or  
19 should have known that its representations, as set forth herein, were material and likely to mislead  
20 the public.

21 81. As a direct and proximate result of Defendant's conduct, as set forth herein,  
22 Defendant has received ill-gotten gains and/or profits including, but not limited to, money.  
23 Therefore, Defendant has been unjustly enriched.

24 82. There is no other adequate remedy at law, and Plaintiffs and the Class will suffer  
25 irreparable harm unless Defendant's conduct is enjoined. As such, Plaintiffs and the members of  
26 the Class request that this Court enjoin Defendant from continuing to engage in the unlawful and  
27

1 deceptive methods, acts and/or practices alleged above. Unless Defendant is permanently enjoined  
2 from continuing to engage in such violations of the CLRA, future consumers of Dreyer's Ice Cream  
3 Products will be damaged by its acts and/or practices in the same way Plaintiffs and the members of  
4 the proposed Class have been damaged.

5  
6 83. Pursuant to California Civil Code § 1780(a)(2), (3), and (5), Plaintiffs and the  
7 members of the Class seek an order for: (1) an injunction against Defendant's illegal conduct as  
8 alleged herein; (2) restitution; (3) ancillary relief; and (4) attorneys' fees and costs to the full extent  
9 allowed by law.

10 84. Pursuant to Civil Code § 1782(d), and in conjunction with the filing of this action,  
11 counsel for Plaintiffs and the Class provided Defendant with written notice that its conduct is in  
12 violation of the CLRA. Plaintiffs and the Class will amend their Complaint within thirty (30) days  
13 of having provided this notice to seek damages under the CLRA.  
14

15 **FIFTH CAUSE OF ACTION**  
16 **Restitution Based On Quasi-Contract/Unjust Enrichment**

17 85. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate  
18 them as if fully set forth herein verbatim. Plaintiffs plead this Count in the alternative.

19 86. Dreyer's conduct in enticing Plaintiffs and the Class to purchase its Ice Cream  
20 Products through its false and misleading packaging as described throughout this Complaint is  
21 unlawful because the statements contained on its product labels are untrue. Dreyer's took monies  
22 from Plaintiffs and the members of the Class for a product promised to be "All Natural," even  
23 though the product it sold is not all natural as specified throughout this Original Complaint.  
24 Dreyer's has been unjustly enriched at the expense of Plaintiffs and Class members as a result of its  
25 unlawful conduct as alleged herein, thereby creating a quasi-contractual obligation on Dreyer's to  
26 restore these ill-gotten gains to Plaintiffs and the Class.  
27  
28



WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the other members of the Class, pray for relief and judgment against Defendant, as follows:

B. Restitution to Plaintiffs and the Class of all monies wrongfully obtained by Defendant:

D. Preliminary and injunctive relief enjoining Defendant from advertising its products accordingly, in violation of California's Sherman Food, Drug and Cosmetic Law and other applicable laws and regulations as stated herein;

F. An order requiring an accounting for, and imposition of, a constructive trust upon all assets received by Defendant as a result of the unfair, misleading, fraudulent and unlawful conduct described herein; and

### INTRADISTRICT ASSIGNMENT

## Original Class Action Complaint

1 pending in the United States District Court for the Northern District of California, Oakland Division.

2  
3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs, on behalf of themselves and all  
5 others similarly situated, demand a trial by jury of any and all issues in this action so triable.

6 DATED: June 24, 2011

7 By: /s/ Daniel R. Tamez

8 Daniel R. Tamez, Esq. (Bar No. 216619)  
9 GNAU & TAMEZ LAW GROUP, LLP  
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14 Fax: 619-793-5215

15 Attorney for Plaintiffs and the Class

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20 Bryan Fears  
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27 Facsimile: (214) 890-0712

28 (pro hac vice application to be filed)

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16 **ATTORNEYS FOR PLAINTIFFS**  
17 **(pro hac vice application pending)**

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

20 PAMELA RUTLEDGE-MUHS and JAY  
21 WOOLWINE, individually and on behalf of all others  
22 similarly situated,

23 Plaintiffs,

24 v.

25 DREYER'S GRAND ICE CREAM, INC.,

26 Defendant.

27 **DECLARATION OF DANIEL**  
28 **R. TAMEZ PURSUANT TO**  
**CALIFORNIA CIVIL CODE**  
**§1780(d)**

29 Daniel R. Tamez Declares:

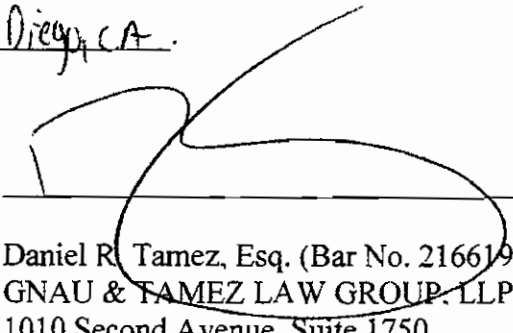
30 1. I am an attorney duly admitted to practice before this Court. I am a partner in the  
31 firm of Gnau & Tamez Law Group, attorneys of record for Plaintiffs Pamela Rutledge-Muhs and  
32 Jay Woolwine.

33 2. This action has been filed in a county described in California Civil Code § 1780(d) as  
34 a proper place for the commencement of this action.

1           3. Defendant Dreyer's Grand Ice Cream, Inc. resides in, has its principal place of  
2 business in, and/or is doing business in Alameda County, California.

3           I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct.

5           Executed on June 24, 2011, at SAN DIEGO, CA.

6  
7  
8  
9             
10          Daniel R. Tamez, Esq. (Bar No. 216619)  
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17  
18          Attorney for Plaintiffs and the Class  
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10 **ATTORNEYS FOR PLAINTIFFS**  
**(pro hac vice application pending)**

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12 FOR THE NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

13 PAMELA RUTLEDGE-MUHS and JAY  
14 WOOLWINE, individually and on behalf of all others  
similarly situated,

15 Plaintiffs.

16 v.

17 DREYER'S GRAND ICE CREAM, INC.,  
18

19 Defendant.  
20

**PLAINTIFFS'**  
**CERTIFICATION OF**  
**INTERESTED ENTITIES OR**  
**PERSONS PURSUANT TO**  
**CIVIL LOCAL RULE 3-16**

21 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**  
22

23 **CERTIFICATION**

24 Pursuant to Civil L. R. 3-16, the undersigned counsel of record for Plaintiffs certifies that the  
25 following listed persons, associations of persons, firms, partnerships, corporations (including parent  
26 corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a  
27 party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that  
28 could be substantially affected by the outcome of this proceeding:

1. PAMELA RUTLEDGE-MUHS (Plaintiff);

1 2. JAY WOOLWINE (Plaintiff);

2 3. DREYER'S GRAND ICE CREAM, INC. (Defendant);

3 4. DREYER'S GRAND ICE CREAM HOLDINGS, INC. (Defendant Dreyer's Grand  
4 Ice Cream, Inc. is a wholly-owned corporate subsidiary of Dreyer's Grand Ice Cream Holdings,  
5 Inc.);

6 5. NESTLÉ HOLDINGS, INC. (Dreyer's Grand Ice Cream Holdings, Inc. is ultimately  
7 a wholly owned corporate subsidiary of Nestlé Holdings, Inc.); and

8 6. NESTLÉ S.A. (Nestlé Holdings, Inc. is a wholly owned corporate subsidiary of  
9 Nestlé S.A.).

10 DATED: June 24, 2011

By: 

Attorney of Record  
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Attorney for Plaintiffs and the Class